

**United States Department of Labor
Employees' Compensation Appeals Board**

A.V., Appellant)	
)	
and)	Docket No. 20-0774
)	Issued: June 10, 2021
U.S. POSTAL SERVICE, CHESTNUT POST)	
OFFICE, Union, NJ, Employer)	

Appearances:
Bruce H. Didriksen., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 18, 2020 appellant, through counsel, filed a timely appeal from a November 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the November 20, 2019 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$4,547.14, for which he was without fault, for the period February 1, 2016 through June 22, 2019, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$668.85 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On July 9, 2007 appellant, then a 57-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2007 he injured his lower back when he picked up items weighing more than 10 pounds while in the performance of duty.⁴ He stopped work on July 9, 2007. OWCP accepted his claim for lumbosacral sprain with right radiculitis and aggravation of preexisting lumbar disc protrusions. It subsequently expanded acceptance of appellant's claim to include thoracic/lumbosacral neuritis. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective August 23, 2007, and placed him on the periodic rolls, effective June 8, 2008.

On April 4, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. It listed the computation period as 1981 to the present.

On April 17, 2019 SSA completed the dual benefits calculation form. The SSA provided appellant's monthly SSA age-related retirement benefit rates beginning February 2016 that both included and excluded appellant's FERS contributions. The form indicated that: beginning February 2016, his SSA rate with FERS was \$1,995.00 and without FERS was \$1,885.00; beginning December 2016, his SSA rate with FERS was \$2,001.00 and without FERS was \$1,891.00; beginning December 2017, his SSA rate with FERS \$2,041.00 and without FERS was \$1,929.00; and beginning December 2018, his SSA rate with FERS was \$2,098.00 and without FERS was \$1,983.00.

By letter dated July 5, 2019, OWCP informed appellant that the portion of SSA age-related retirement benefits attributable to his federal service would be deducted from his 28-day periodic rolls compensation payments.

On July 2, 2019 SSA completed another dual benefits calculation form with updated amounts. It provided corresponding monthly SSA benefits rates beginning February 2016 that both included and excluded appellant's FERS contributions. The form indicated that: beginning February 2016, his SSA rate with FERS was \$1,995.00 and without FERS was \$1,887.00; beginning December 2016, his SSA rate with FERS was \$2,001.00 and without FERS was \$1,892.00; beginning December 2017, his SSA rate with FERS \$2,041.00 and without FERS was

⁴ The record reflects that appellant was working full-time, modified duty due to a previously accepted claim. Under File No. xxxxxx650, OWCP accepted appellant's traumatic injury claim for a lumbar sprain causally related to a September 19, 2005 employment incident. This claim has not been administratively combined by OWCP with the current claim. (RD 7/26/07; 9/18/08)

\$1,930.00; and beginning December 2018, his SSA rate with FERS was \$2,098.00 and without FERS was \$1,984.00.

In a FERS offset calculation form dated September 24, 2019, OWCP used the information provided by SSA to calculate the 28-days' FERS offset for the relevant periods, and calculated a total overpayment in the amount of \$4,547.14. It found that: for the period February 1, through November 30, 2016, appellant received an overpayment of \$1,102.42; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment of \$1,323.63; for the period December 1, 2017 through November 30, 2018, appellant received an overpayment of \$1,347.69; and for the period December 1, 2018 through June 22, 2019, appellant received an overpayment of \$773.41.

On September 24, 2019 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$4,547.14, for the period February 1, 2016 through June 22, 2019, because it had failed to reduce his wage-loss compensation benefits by the portion of his SSA age-related retirement benefits that were attributable to federal service. It determined that he was without fault in the creation of the overpayment and provided a calculation of the overpayment amount. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), to determine a reasonable repayment method, and advised him that he could request waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP further notified him that within 30 days of the date of the letter he could request a teleconference, a final decision based on the written evidence, or a precoupment hearing. No response was received.

By decision dated November 20, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,547.14 for the period February 1, 2016 through June 22, 2019 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset. It also found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not completed and returned the Form OWCP-20. OWCP required recovery of the overpayment by deducting \$668.85 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁵ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁶

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

attributable to the employee's federal service.⁷ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period February 1, 2016 through June 22, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period. The receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁹ In this case, OWCP was notified by SSA in a form received by OWCP on April 22, 2019 and again on July 10, 2019 that appellant had concurrently received FECA benefits and SSA age-related retirement benefits attributable to his federal service without a proper offset for the period February 1, 2016 through June 22, 2019. Consequently, the fact of overpayment has been established.

Although the Board finds that the fact of overpayment has been established, the Board further finds that the case is not in posture for decision with respect to the amount of the overpayment. On April 17, 2019 OWCP received a completed FERS/SSA dual benefits calculation form that contained corresponding monthly SSA benefits rates beginning February 2016 that both included and excluded appellant's FERS contributions. However, on July 2, 2019 OWCP received another completed FERS/SSA dual benefits calculation form, which contained different amounts for the SSA rate without FERS. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹⁰ In this case, however, the Board finds that OWCP has not adequately explained how the overpayment was determined in light of the discrepancies in the evidence provided by SSA regarding the different amounts of appellant's monthly SSA rates without the FERS offset. As such, the Board is unable to verify that appellant received an overpayment of compensation in the amount of \$4,547.14.¹¹

Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall determine the proper amount of the overpayment of compensation based on the correct rates provided by SSA for the period during which the overpayment occurred. It shall then

⁷ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *Supra* note 8.

¹⁰ *A.P.*, Docket No. 19-1671 (issued February 22, 2021); *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹¹ *See S.H.*, Docket No. 20-1189 (issued January 27, 2021); *see also E.T.*, Docket No. 19-1046 (issued December 31, 2019).

issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹²

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period February 1, 2016 through June 22, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² Given the Board's disposition on Issue 1 regarding the fact and amount of overpayment, Issues 2 and 3 regarding waiver and recovery of the overpayment are moot. *See C.C.*, Docket No. 16-1190 (issued May 12, 2017).